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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/189,112	11/09/1998	SHMUEL SHAFFER	98P7917US	5131

7590

05/07/2003

SIEMENS CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
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EXAMINER

HOM, SHICK C

ART UNIT

PAPER NUMBER

2666

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/189,112

Applicant(s)

SHAFFER ET AL.

Examiner

Shick C Hom

Art Unit

2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-20 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit:

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 2-21-03 have been fully considered but they are not persuasive.

Regarding argument in page 3 line 23 to page 4 line 12 and page 5 line 23 to page 6 line 3: In response to applicant's argument that the invention solves the problem in which the ToL gatekeeper is not aware of TFA calls processed by the PBX and their bandwidth usage by allowing the TFA bandwidth usage by one of the call processing entities to be accounted for by the other, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Regarding argument in page 4 line 13 to page 5 line 5: Naudus in col. 7 lines 35-52 which recite the gatekeeper for

Art Unit:

managing access to the packet-based network, routing of telephone calls between Internet Telephone gateways, and ensuring network resources are available and allocating bandwidth whereby the gatekeepers and Accounting/Authorization server work together to determine and establish call connections for data to transverse the network from a source telephone, terminal or computer to a destination terminal or computer and Medhat et al. in col. 14 line 66 to col. 15 line 16 that it is known to provide a bandwidth allocation systems which uses restrictive routing control to track connection relationships, to under-allocate and track the bandwidth available so that all of the available bandwidth in the system is not consumed, thereby preventing possible overloaded or degraded QoS whereby if a VP or VPG reaches the fixed amount of bandwidth above a level, then the VP or VPG may not use more bandwidth even if it is available in the system clearly anticipate the method of communicating in a system including a PBX and server coupled in a LAN comprising the step of informing the server of a call setup message, determining if bandwidth is available and abort call if bandwidth is not available as in claims 6, 15-16, and 18.

Regarding argument in page 5 lines 6-22: In response to applicant's argument that the examiner's conclusion of

Art Unit:

obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the

Art Unit:

inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103<sup>®</sup> and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-5, 14, 17, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swartz et al. in view of Naudus.

Swartz et al. disclose nearly all the subject matter now claimed. Note Fig. 1 which shows a telecommunications system including a PBX 36, a server 32, and the telephony devices MU's coupled to the LAN clearly anticipate the telecommunications system comprising the PBX, server, telephony devices coupling the LAN as in claims 1, 6, and 14. Col. 12 lines 17-28 which recite a gateway between the PBX and the phone clearly anticipate the telephony feature access gateway coupling the telephony devices as in claims 1, 6, and 14.

Swartz et al. did not teach the server configured to provide call processing, to monitor bandwidth usage of calls it processed, including means for accounting for bandwidth requirements of telephony devices coupled to the gateway for

Art Unit:

which the server has not performed call processing as in claim 1, 6, 14, the database at the server as in claim 6, message to abort or preventing a call as in claims 3 and 4, receiving and sending call setup message and an acknowledge message to inform PBX when call processed is completed as in claims 7, 8, 9, 11, and the gatekeeper as in claims 14, 19, 20. Swartz et al. did not teach the H.323 compatible server and telephony devices communicating with the H.323 server as in claims 2, 5, 12-13, and 17.

Naudus teaches that it is known to provide a gatekeeper 22 for managing access to the local area network LAN and routing of telephone calls between gateways 40, 80 and access to network for H.323 endpoints including the Accounting/Authorization server 26 for ensuring network resources are available, for allocating bandwidth, and allocation and locating destination gateways whereby working together, the gateways 40, 80, gatekeepers 22 and Accounting/Authorization server 26 determine and establish call connections for data to transverse the network from a source telephone, terminal or computer to a destination terminal or computer as set forth at col. 7 lines 35-52 in the field of digital and multiplex communications for the purpose of providing an efficient added feature of DTMF/MF tones in a telephone

Art Unit:

connection on a network-based telephone system which clearly anticipate the server configured to provide call processing, to monitor bandwidth usage of calls it processed, including means for accounting for bandwidth requirements of telephony devices coupled to the gateway for which the server has not performed call processing as in claim 1, 6, 14, the gatekeeper as in claims 14, 19-20, and the H.323 compatible server and telephony devices communicating with the H.323 server as in claims 2, 5, 12-13, and 17. Col. 7 lines 1-20 which recite the Accounting/Authorization server 26 being used as a central database for maintaining information relating to subscribers to a network-based telephony service clearly anticipate the step of accessing a database at the ToL server to determine if bandwidth is available on the LAN as in claim 6. Col. 10 lines 15-33 which recite sending a Setup message to the gateway and in turn receiving either a Connect message indicating acceptance of the call, or Release Complete message indicating refusal of the call and once the destination telephone network connection is made clearly anticipate means and message to abort or preventing a call as in claims 3 and 4.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the server



Art Unit:

configured to provide call processing, to monitor bandwidth usage of calls it processed, including means for accounting for bandwidth requirements of telephony devices coupled to the gateway for which the server has not performed call, the database at the server, message to abort or preventing a call, sending call setup message and an acknowledge message to inform PBX when call processed is completed, the gatekeeper, the use of H.323 compatible server and telephony devices communicating with the H.323 server as taught by Naudus to the system of Swartz et al. because Naudus teaches the desirable advantage of providing the efficient added feature of DTMF/MF tones in a telephone connection on a network-based telephone system of Swartz et al.

4. Claims 6-9, 11-13, 15-16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swartz et al. in view of Naudus as applied to claims 1-5, 14, 17, and 19-20 above, and further in view of Medhat et al.

Swartz et al. in view of Naudus did not teach the step of sending a message to abort call if bandwidth is not available as in claims 6, 15-16, or if exceeds a predetermined usage as in claim 18.

Art Unit:

Medhat et al. that it is known to provide a bandwidth allocation systems which uses restrictive routing control to track connection relationships, to under-allocate and track the bandwidth available so that all of the available bandwidth in the system is not consumed, thereby preventing possible overloaded or degraded QoS whereby if a VP or VPG reaches the fixed amount of bandwidth above a level, then the VP or VPG may not use more bandwidth even if it is available in the system as set forth at col. 14 line 66 to col. 15 line 16 in the field of digital and multiplex communications for the purpose of preventing degraded QoS and congestion, and providing more effectively utilization of available bandwidth which clearly anticipate the step of sending a message to abort call if bandwidth is not available, or if exceeds a predetermined usage as in claims 6, 15-16, and 18.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the step of sending a message to abort call if bandwidth is not available, or if exceeds a predetermined usage as taught by Medhat et al. to the system of Swartz et al. in view of Naudus because Medhat et al. teach the desirable advantage of more effective utilization of available bandwidth and said more effective utilization of

Art Unit:

available bandwidth being desirable to achieve efficient system operation in Swartz et al. in view of Naudus.

***Allowable Subject Matter***

5. Claim 10 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shaffer et al. disclose a system and method for securing available communications network resources.

Haserodt discloses a Web-page interface to telephony features.

7. Any response to this nonfinal action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for Technology Center 2600 only)

Art Unit:

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (2600 Receptionist at (703) 305-4750).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick Hom whose telephone number is (703) 305-4742. The examiner's regular work schedule is Monday to Friday from 8:00 am to 5:30 pm EST and out of office on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao, can be reached at (703) 308-5463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

SH

May 2, 2003



DANG TON  
PRIMARY EXAMINER